

AMENDED IN SENATE SEPTEMBER 3, 2003

AMENDED IN SENATE JULY 1, 2003

AMENDED IN ASSEMBLY MAY 27, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 691

**Introduced by Assembly Member Daucher
(Coauthors: Assembly Members Chu and Lieber)**

February 19, 2003

An act to add Chapter 1.6 (commencing with Section 120392) to Part 2 of Division 105 of the Health and Safety Code, relating to immunizations.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, Daucher. Nursing facilities: vaccines.

Under existing law, the State Department of Health Services is responsible for the licensure and regulation of health facilities, including skilled nursing facilities and intermediate care facilities, as defined.

Under existing law, the department also has specified responsibilities relating to the prevention and control of communicable diseases by various means, including requiring specified immunization by vaccine for various populations.

This bill would require a ~~long-term health care facility~~, a skilled nursing facility, an intermediate care facility, or a nursing facility, as defined, to offer immunizations for influenza and pneumococcal

disease to its residents, aged 65 years or older, between October 1 and April 1 of each year, and to offer pneumococcal vaccine to all new admittees. The bill would require that the facility be reimbursed the standard Medi-Cal rate for vaccines provided to Medi-Cal recipients, except under specified circumstances. The bill would require the facility to obtain informed consent for the immunization services from the resident or, if the person lacks the capacity to make medical decisions, for the person legally authorized to make medical decisions on the resident's behalf.

This bill would specify circumstances under which the immunizations may not be administered to a resident, and circumstances under which the facility shall not be required to provide the immunization services required by the bill. The bill would provide that if a health care facility fails to ~~provide~~ offer an immunization pursuant to the bill ~~despite a good faith effort, due to specified circumstances~~ the failure shall not be the basis for issuing a deficiency or citation against the facility's license.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 1.6 (commencing with Section
2 120392) is added to Part 2 of Division 105 of the Health and Safety
3 Code, to read:

4
5 CHAPTER 1.6. INFLUENZA AND PNEUMOCOCCAL IMMUNIZATIONS

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7 120392. For purposes of this chapter, the following
8 definitions apply:

9 (a) "Health care facility" means ~~a long-term health care~~
10 ~~facility as defined in Section 1418~~, a skilled nursing facility as
11 defined in subdivision (c) of Section 1250, an intermediate care
12 facility as defined in subdivision (d) of Section 1250, or a nursing
13 facility as defined in subdivision (k) of Section 1250. This chapter
14 shall not apply to hospital-based skilled nursing facilities.

15 (b) "Medically contraindicated" means that the administration
16 of the influenza or pneumococcal vaccines to a person, because of
17 a medical condition of that person, would be detrimental to the
18 person's health if the person receives either or both of the vaccines.

1 120392.2. (a) Each year, commencing October 1 to the
2 following April 1, inclusive, every health care facility, as defined
3 in subdivision (a) of Section 120392, shall offer immunizations for
4 influenza and pneumococcal disease to residents, aged 65 years or
5 older, receiving services at the facility, based upon the latest
6 recommendations of the Advisory Committee on Immunization
7 Practices (ACIP) of the Centers for Disease Control and
8 Prevention, and the latest recommendations of appropriate entities
9 for the prevention, detection, and control of influenza outbreaks
10 in California long-term care facilities.

11 (b) Each health care facility, as defined in subdivision (a) of
12 Section 120392, shall offer pneumococcal vaccine to all new
13 admittees to the health care facility, based on the latest
14 recommendations of the ACIP.

15 (c) The facility shall be reimbursed the standard Medi-Cal rate
16 for an immunization provided to a Medi-Cal recipient, unless he
17 or she is also a Medicare recipient whose coverage includes
18 reimbursement for the immunization.

19 120392.4. (a) A resident who receives services at a health
20 care facility during the period of October 1 to April 1 shall have
21 his or her status for influenza and pneumococcal immunization
22 determined by his or her physician, and, if appropriate, the facility
23 shall offer to make the immunizations available, unless the facility,
24 through written policies and procedures and using standardized
25 nursing procedures, offers to make the immunizations available
26 without limitation as to the period when the residents receive
27 services at the facility.

28 (b) A health care facility shall obtain from a resident who
29 requests immunization services, or, if the person lacks the capacity
30 to make medical decisions, from the person legally authorized to
31 make medical decisions on the resident's behalf, informed consent
32 for the resident to be immunized by vaccination against influenza
33 or pneumococcal disease, or both, to be conducted by the facility
34 while the resident is receiving services at the facility.

35 (c) A health care facility shall comply with Section 1418.8 with
36 respect to a resident who lacks the capacity to make health care
37 decisions, and there is no person with legal authority to make these
38 decisions on behalf of the resident.

(d) The health care facility shall document in a resident's medical record whether the resident has ~~received~~ *been offered* the influenza vaccine or the pneumococcal vaccine.

120392.6. No person *who has been offered the vaccine as required under this chapter* may receive either an influenza vaccine or pneumococcal vaccine pursuant to this chapter if any of the following conditions exists:

(a) The vaccine is medically contraindicated, as described in the product labeling approved by the federal Food and Drug Administration or by the recommendations established by the Advisory Committee on Immunization Practice (ACIP) of the Centers for Disease Control and Prevention that are in effect at the time of vaccination.

(b) Receipt of the vaccine is against the resident's personal beliefs.

(c) Receipt of the vaccine is against the resident's wishes, or, if the person lacks the capacity to make medical decisions, is against the wishes of the person legally authorized to make medical decisions on the resident's behalf.

120392.8. (a) Notwithstanding any other provision of this chapter, a health care facility shall not be required to ~~provide~~ *offer* immunizations for influenza and pneumococcal disease under either of the following circumstances:

(1) The facility is unable to obtain the vaccine due to a shortage of the supply of vaccine.

(2) The resident refuses to pay for the vaccine and there is no other funding source available to pay for the cost of the vaccine.

(b) ~~If a health care facility, as defined in subdivision (a) of Section 120392, fails to provide an immunization pursuant to this chapter despite a good faith effort, such as from clerical error, lack of availability of vaccine, or lack of patient cooperation, the failure~~ *Section 120392, fails to offer an immunization pursuant to this chapter due to lack of availability of vaccine, a physician's refusal to assess the resident or cooperate with the recommendations of the provisions of this chapter, or lack of resident cooperation, the failure* shall not be the basis for issuing a deficiency or citation against the facility's license.

(c) *The department may not issue a deficiency for failure to offer an immunization if a health care facility provides evidence that it made the offer, even if the evidence does not include the*

- 1 *documentation that is required to be in a resident's medical record*
- 2 *pursuant to subdivision (d) of Section 120392.4.*

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